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| APPLICATION NO.  | FILING DATE    | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/735,332   | 12/12/2000     | John M.K. Daniel     | 1001.1351106        | 5433             |
| 7.   | 590 02/07/2003 |                      |                     |                  |
| Glenn M. Seager<br>CROMPTON SEAGER & TUFTE, LLC<br>Suite 895 |                |                      | EXAMINER            |                  |
|  |                |                      | NGUYEN, VI X        |                  |
| 331 Second Avenue South Minneapolis, MN 55401-2246           |                | ART UNIT             | PAPER NUMBER        |                  |
| winneapons, w  | 111 33701-2270 |                      | 3731                |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary    Examiner  |  | · •  |   |                 |  |  |  |  |
|--|--|--|---|-----------------|--|--|--|--|
| ## Examiner   Art Unit   |  | Application No.  | Applicant(s)  | B               |  |  |  |  |
| Victor X Nguyen   3731   37    |  | 09/735,332   | DANIEL ET AL.   |                 |  |  |  |  |
| The MAILING DATE of this communication appears on the cover sheet with the correspondence address → Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions of the major by evaluable under the previous of 3°C FR 1.13(4), in no event, however, may a reply be timely filled.  If the period for reply specified above is less than thirty (30) days, a reply which the statutory minimum of thirty (30) days will be considered timely.  If the period for reply specified above, the maximum statutory prief will specy and will egipt as (5) (4) DATIFS from the mailing date of this communication of the period for reply specified above, the maximum statutory prief will specy and will egipt as (5) (4) DATIFS from the mailing date of this communication, reply will be statutory minimum of the communication of the period of the communication, and the statutory date of the communication of the commu  | Office Action Summary  | Examiner   | Art Unit  |                 |  |  |  |  |
| Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MALLING DATE OF THIS COMMUNICATION.  Extensions of time may be available used to the provisions of 37 CFR 1.136(a). In a event, however, may a reply be timely filed  Extensions of time may be available used to the provisions of 37 CFR 1.136(a). In a event, however, may a reply be timely filed  Extensions of time may be available used to the provisions of 37 CFR 1.136(a). In a event, however, may a reply be timely filed  Extensions of time may be available used to the provision of 37 CFR 1.136(a). If the period for reply she period above, the maximum statutory parties will apply end will expire 32 K(s) MONTHS from the mailing date of this communication. If the period to reply she period by the College of the 32 CFR 1.736(b). This action is provided by the College of the 32 CFR 1.736(b). Status  1)  Responsive to communication(s) filled on 17 January 2003.  2a) This action is FINAL. 2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Queyle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Clalims  4) Clalim(s) 31-36 is/are pending in the application.  4a) Clalim(s) 31-36 is/are rejected.  7) Clalim(s) is/are allowed.  6) Clalim(s) are subject to restriction and/or election requirement.  Application Papers  9) The specification is objected to by the Examiner.  Application Papers  9) The proposed drawing correction filed on is/are: a consideration is according to the provision of the graving(s) be held in abeyance. See 37 CFR 1.85(a).  11) The proposed drawing correction filed on is/are: a considered to by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) All b) Some * c) None of  1. Certified copies of the priority documents have been recei |  |  |   |                 |  |  |  |  |
| THE MAILING DATE OF THIS COMMUNICATION.  Extensions of the may be available under the provisions of 3 CPR 1.13(c). In no event, however, may a reply be timely filed after 50x (6) MONTRS from the mailing date of his communication.  It NO periods for reply visibility from the mailing date of his communication.  It NO periods for reply is pacified above, the meanine states of private the page and vill open date. (8) MONTRS from the mailing date of this communication.  Failure to reply visibility the set of celeraded particular for reply vill, by datable, cause the application, become ARANDONED (35 U.S. c. § 133). Any reply received by the Office attent then there maining date of this communication, even if timely filed, may reduce any serviced by the Office and the through the provision of the communication of the communication of the communication.  Status  1) [2] Responsive to communication(s) filed on 17.1 January 2003.  2a) This action is FINAL.  2b) [2] This action is FINAL.  2b) [2] This action is final.  3] Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) [2] Claim(s) 31-36 is/are pending in the application.  4a) Of the above claim(s) is/are allowed.  6) [2] Claim(s) is/are allowed.  6) [2] Claim(s) is/are allowed.  6) [2] Claim(s) is/are allowed.  7) [3] The grawing(s) filed on is/are: any accepted or big objected to by the Examiner.  9) [4] The grawing(s) filed on is/are: any accepted or big objected to by the Examiner.  Application Papers  9) [7] The grawing(s) filed on is/are: any accepted or big objected to by the Examiner.  10) [7] The proposed drawings are required in reply to this Office action.  12) [7] The oath or declaration is objected to by the Examiner.  13] Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  2a) [7] Acknowledgment is made of a claim for domestic priority unde |  |  |   |                 |  |  |  |  |
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| 3   Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) ○ Claim(s) 31-36 is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.  5) □ Claim(s) is/are allowed.  6) ○ Claim(s) is/are allowed.  7) □ Claim(s) is/are objected to.  8) □ Claim(s) are subject to restriction and/or election requirement.  Application Papers  9) □ The specification is objected to by the Examiner.  100 □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  11) □ The proposed drawing correction filed on is: a) □ approved b) □ disapproved by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12) □ The oath or declaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13) □ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) □ All b) □ Some * c) □ None of:  1. □ Certified copies of the priority documents have been received in Application No  3. □ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  14) □ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  a) □ The translation of the foreign language provisional application has been received.  15) □ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.  **Attachmont(e)**  | 1) Responsive to communication(s) filed on   | <u>17 January 2003</u> .   |   |                 |  |  |  |  |
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| Disposition of Claims  4) □ Claim(s) 31-36 is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.  5) □ Claim(s) is/are allowed.  6) □ Claim(s) is/are rejected.  7) □ Claim(s) is/are objected to.  8) □ Claim(s) are subject to restriction and/or election requirement.  Application Papers  9) □ The specification is objected to by the Examiner.  10) □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  11) □ The proposed drawing correction filed on is: a) □ approved b) □ disapproved by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12) □ The oath or declaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13) □ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) □ All b) □ Some * c) □ None of:  1. □ Certified copies of the priority documents have been received.  2. □ Certified copies of the priority documents have been received in Application No  3. □ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  14) □ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  a) □ The translation of the foreign language provisional application has been received.  15 □ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 120 and/or 121.  Attachment(s)  Notice of References Cited (PTO-892)  4) □ Interview Summary (PTO-413) Paper No(s)   | •  |  |   | ne merits is    |  |  |  |  |
| 4a) Of the above claim(s) is/are withdrawn from consideration.  5) □ Claim(s) is/are allowed.  6) ☒ Claim(s) is/are allowed.  7) □ Claim(s) is/are objected to.  8) □ Claim(s) are subject to restriction and/or election requirement.  Application Papers  9) □ The specification is objected to by the Examiner.  10) □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  11) □ The proposed drawing correction filed on is: a) □ approved b) □ disapproved by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12) □ The oath or declaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13) □ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) □ All b) □ Some * c) □ None of:  1. □ Certified copies of the priority documents have been received.  2. □ Certified copies of the priority documents have been received in Application No  3. □ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  14) □ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.  Attachment(s)  Attachment(s)  Notice of References Cited (PTO-892)    Notice of References Cited (PTO-892)   Notice of Informal Patent Application (PTO-152)   |  | idei Ex parte Quayle, 1905 C   | 5.D. 11, 455 O.G. 215.  |                 |  |  |  |  |
| 5  | 4)⊠ Claim(s) 31-36 is/are pending in the applic  | cation.  |   |                 |  |  |  |  |
| 6)  Claim(s) 31-36 is/are rejected.  7)  Claim(s)  is/are objected to.  8  Claim(s)  are subject to restriction and/or election requirement.  Application Papers  9)  The specification is objected to by the Examiner.  10)  The drawing(s) filed on  is/are: a) accepted or b) objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  11)  The proposed drawing correction filed on  is: a) approved b) disapproved by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12)  The oath or declaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a)  All b) Some *c) None of:  1.  Certified copies of the priority documents have been received.  2.  Certified copies of the priority documents have been received in Application No.  application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  a)  The translation of the foreign language provisional application has been received.  15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.  Attachment(s)    Notice of References Cited (PTO-892)    Interview Summary (PTO-413) Paper No(s).   | 4a) Of the above claim(s) is/are withdrawn from consideration.   |  |   |                 |  |  |  |  |
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| 8   Claim(s) are subject to restriction and/or election requirement.  Application Papers  9   The specification is objected to by the Examiner.  10   The drawing(s) filed on is/are: a   accepted or b   objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  11   The proposed drawing correction filed on is: a   approved b   disapproved by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12   The oath or declaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13   Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a)   All   b)   Some * c)   None of:  1.   Certified copies of the priority documents have been received.  2.   Certified copies of the priority documents have been received in Application No  3.   Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  14)   Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  a)   The translation of the foreign language provisional application has been received.  15)   Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.  Attachment(s)  10   Interview Summary (PTO-413) Paper No(s)  5)   Notice of Informal Patent Application (PTO-152)  | 6)⊠ Claim(s) <u>31-36</u> is/are rejected.   |  |   |                 |  |  |  |  |
| Application Papers  9) ☐ The specification is objected to by the Examiner.  10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  11) ☐ The proposed drawing correction filed on is: a) ☐ approved b) ☐ disapproved by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12) ☐ The oath or declaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) ☐ All b) ☐ Some * c) ☐ None of:  1. ☐ Certified copies of the priority documents have been received.  2. ☐ Certified copies of the priority documents have been received in Application No  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  a) ☐ The translation of the foreign language provisional application has been received.  15) ☑ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.  Attachment(s)  1) ☑ Notice of References Cited (PTO-892)  2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  5) ☐ Notice of Informal Patent Application (PTO-152)   | 7) Claim(s) is/are objected to.  |  |   |                 |  |  |  |  |
| 9 The specification is objected to by the Examiner.  10 The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12) The oath or declaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) All b) Some * c) None of:  1. Certified copies of the priority documents have been received.  2. Certified copies of the priority documents have been received in Application No  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  a) The translation of the foreign language provisional application has been received.  15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.  Attachment(s)  1) Interview Summary (PTO-413) Paper No(s)  3) Notice of Draftsperson's Patent Drawing Review (PTO-948)  5) Notice of Informal Patent Application (PTO-152)  |  |  |   |                 |  |  |  |  |
| 10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  11) ☐ The proposed drawing correction filed on is: a) ☐ approved b) ☐ disapproved by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12) ☐ The oath or declaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) ☐ All b) ☐ Some * c) ☐ None of:  1. ☐ Certified copies of the priority documents have been received.  2. ☐ Certified copies of the priority documents have been received in Application No  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  a) ☐ The translation of the foreign language provisional application has been received.  15) ☑ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.  Attachment(s)  1) ☑ Notice of References Cited (PTO-892)  2) ☐ Notice of Informal Patent Application (PTO-152)  | · · ·  | -1   |   |                 |  |  |  |  |
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U.S. Patent and Trademark Office PTO-326 (Rev. 04-01) Application/Control Number: 09/735,332

Art Unit: 3731

#### **DETAILED ACTION**

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

# Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 1. Claims 31-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 31 recites the limitation "the expandable emboli capturing device" in line 5. There is insufficient antecedent basis for this limitation in the claim. Claim 32 recites the
- limitation "the frame is slideably disposed about the elongate member" in line 10. It is unclear how the frame is slideably disposed about the elongate member.

### Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 31-36 are rejected under 35 U.S.C. 102 (e) as being anticipated by Cano et al. (U.S. 5,779,716).

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With respect to claim 31, Cano et al discloses in figures 9, 10, 11 and Abstract, an emboli capturing systems includes an elongate member (12) having a proximal end and a distal end. A flexible emboli capturing device (16) mounted proximate the distal end, the expandable emboli capturing device (figs 9 and 11) forming a distally disposed emboli collection portion with a proximally opening mouth (col. 5 lines 41-45). A frame (18,20) disposed on the mouth of the flexible emboli capturing device and connected to the elongate member (12).

With respect to claims 32-33, Cano et al discloses the emboli capturing system (fig. 10) wherein the frame (18, 20) is slideably disposed about the elongate member (12), in addition, the frame (18, 20) is attached to the elongated member proximal of where the flexible member (16) is attached.

With respect to claims 34-36, Cano et al discloses the emboli capturing system, wherein the frame (18, 20) includes a flexible material and a shape memory alloy (col.5 lines 3-9, lines 23-27 and col. 6 lines 49-55). Moreover, the frame (18, 20) includes a continuous loop (Abstract and figures 6, 11).

#### Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 5,133,733 to Rasumssen et al

U.S. Pat. No. 5,147,379 to Sabbaghian et al

U.S. Pat. No. 5,769,816 to Barbut et al

U.S. Pat. No. 6,010,522 to Barbut et al

U.S. Pat. No. 5,895,399 to Barbut et al

U.S. Pat. No. 5,769,816 to Barbut et al

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (703) 305-4898. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Victor X Nguyen Examiner Art Unit 3731

vn

February 4, 2003

KEVINT.TRUONG V PRIMARY EXAMINER

14/03